

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of :  
Young-lak KIM :  
Serial No. 10/575,171 : Group Art Unit: 2617  
Filed: April 7, 2006 : Examiner: Munjalkumar C Patel  
For: METHOD FOR MODEM SWITCHING FOR USE WITH MM-MB TERMINAL

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
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Attn: BOARD OF PATENT APPEALS AND INTERFERENCES

**AMENDED APPELLANT'S BRIEF UNDER 37 C.F.R. § 41.37(c)**

This amended brief is submitted in response to the notice of non-complaint Appeal Brief dated January 25, 2011. The SUMMARY OF CLAIMED SUBJECT MATTER section has been revised to cite the specification by page and line numbers. Other sections are identical to the Appeal Brief filed January 12, 2011.

This brief contains these items under the following headings, and in the order set forth below (*37 C.F.R. § 41.37(c)*):

- I. Real Party in Interest.
- II. Related Appeals and Interferences.
- III. Status of Claims.
- IV. Status of Amendments.
- V. Summary of Claimed Subject Matter.
- VI. Grounds of Rejection to be Reviewed on Appeal.
- VII. Argument.
- VIII. Claims Appendix.
- IX. Evidence Appendix.
- X. Related Proceedings Appendix.

The final page of this brief bears the attorney's signature.

**I. REAL PARTY IN INTEREST**

The real party in interest in this appeal is SK Telecom Co., Ltd. of 11 Euljiro 2(I)-Ga, Jung-Gu, Seoul, Republic of Korea.

**II. RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal.

### **III. STATUS OF CLAIMS**

#### **A. Total Number of Claims in Application**

There is a total of 28 claims in the application, which are identified as claims 1-2, 4-7, and 9-30.

#### **B. Status of all the claims**

1. Claims cancelled: claims 3, 8, 31-32
2. Claims withdrawn from consideration but not cancelled: none
3. Claims pending: claims 1-2, 4-7, and 9-30
4. Claims allowed: none
5. Claims rejected: claims 1-2, 4-7, and 9-30

#### **C. Claims on Appeal**

Claims on appeal are claims 1-2, 4-7, and 9-30 as rejected by the Final Office Action dated March 3, 2010.

**IV. STATUS OF AMENDMENTS**

No Amendment has been filed in response to the March 3, 2010 Final Office Action.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

For the purpose of this appeal brief only, the claimed subject matter will be explained herein below with references to the specification by page and line number, and to the drawings by reference characters.

The invention of **independent claim 1** is directed to a method (FIG. 5) of switching between a WCDMA modem (342, FIG. 3) and a CDMA-2000 modem (344, FIG. 3) of an MM-MB (multimode-multiband) terminal (300, FIG. 3), when the MM-MB terminal being in a WCDMA idle state (S500, FIG. 5) moves from an overlay zone (130, FIG. 1) into a CDMA-2000 zone (120, FIG. 1),<sup>1</sup> said method comprising the steps of:

(a) receiving a WCDMA signal transmitted from a WCDMA system, and measuring an Ec/Io (energy of carrier/interference of others) value by using the WCDMA signal;<sup>2</sup>

(b) determining whether the Ec/Io value is lower than a predetermined CDMA-2000 ON threshold TH<sub>ON</sub> (FIG. 4);<sup>3</sup>

(c) if it is determined at step (b) that the Ec/Io value is lower than TH<sub>ON</sub>, starting to measure a time lapse, wherein the time lapse is a cumulative time during which the Ec/Io value remains lower than the CDMA-2000 ON threshold TH<sub>ON</sub>, and determining whether the time lapse exceeds a preset CDMA-2000 ON condition time H<sub>d</sub> (FIG. 4);<sup>4</sup>

(d) if it is determined at step (c) that the time lapse exceeds H<sub>d</sub>, activating the CDMA-2000 modem,<sup>5</sup> wherein the CDMA-2000 modem is activated before the MM-MB

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<sup>1</sup> Specification at page 15, line 24 to page 16, line 19, and FIG. 4.

<sup>2</sup> Specification at page 16, line 24 to page 17, line 3, and FIG. 5 at S502.

<sup>3</sup> Specification at page 17, lines 4-9, and FIG. 5 at S504.

<sup>4</sup> Specification at page 17, lines 4-15, and FIG. 5 at S506, S508.

<sup>5</sup> Specification at page 17, lines 10-15, and FIG. 5 at S510.

terminal leaves the overlay zone and while the WCDMA modem is still being activated to keep the MM-MB terminal in the WCDMA idle state;<sup>6</sup> and

- (e) performing an initialization for a CDMA-2000 system to switch the MM-MB terminal from the WCDMA idle state into a CDMA-2000 idle state.<sup>7</sup>

The invention of **independent claim 6** is directed to a method (FIG. 7) of switching between a WCDMA modem (342, FIG. 3) and a CDMA-2000 modem (344, FIG. 3) of an MM-MB terminal (300, FIG. 3), when the MM-MB terminal moves from an overlay zone (130, FIG. 1) into a CDMA-2000 zone (132, FIG. 1) while handling a WCDMA call,<sup>8</sup> said method comprising the steps of:

- (a) while the MM-MB terminal is handling the WCDMA call by the active WCDMA modem,<sup>9</sup> receiving a WCDMA signal transmitted from a WCDMA system, and measuring an Ec/Io (energy of carrier/interference of others) value by using the WCDMA signal;<sup>10</sup>

- (b) determining whether the Ec/Io value is lower than a predetermined CDMA-2000 ON threshold TH<sub>ON</sub> (FIG. 6);<sup>11</sup>

- (c) if it is determined at step (b) that the Ec/Io value is lower than TH<sub>ON</sub>, starting to measure a time lapse, wherein the time lapse is a cumulative time during which the Ec/Io value remains lower than the CDMA-2000 ON threshold TH<sub>ON</sub>, and determining whether the time lapse exceeds a preset CDMA-2000 ON condition time H<sub>d</sub> (FIG. 6);<sup>12</sup>

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<sup>6</sup> Specification at page 16, lines 2-13.

<sup>7</sup> Specification at page 17, line 27 to page 18, line 2, and FIG. 5 at S512, S514.

<sup>8</sup> Specification at page 18, line 3 to page 19, line 25, and FIG. 6.

<sup>9</sup> Specification at page 20, lines 4-10, and FIG. 7 at S700.

<sup>10</sup> Specification at page 20, lines 4-10 and page 16, line 24 to page 17, line 3, and FIG. 7 at S702.

<sup>11</sup> Specification at page 20, lines 4-10 and page 17, lines 4-9, and FIG. 7 at S704.

<sup>12</sup> Specification at page 20, lines 4-10 and page 17, lines 4-15, and FIG. 7 at S706, S708.

(d) before the MM-MB terminal leaves the overlay zone and while the WCDMA modem is still actively handling the WCDMA call,<sup>13</sup> if it is determined at step (c) that the time lapse exceeds H<sub>d</sub>, activating the CDMA-2000 modem,<sup>14</sup> and then determining whether the WCDMA call has been terminated;<sup>15</sup> and

(e) if the WCDMA call is determined at step (d) to have been terminated, performing an initialization for a CDMA-2000 system to switch the MM-MB terminal into a CDMA-2000 idle state.<sup>16</sup>

The invention of **independent claim 16** is directed to a method (FIG. 8) of switching between a CDMA-2000 modem (344, FIG. 3) and a WCDMA modem (342, FIG. 3) of an MM-MB (multimode-multiband) terminal (300, FIG. 3), when the MM-MB terminal being in a CDMA-2000 idle state (S800, FIG. 8) moves from a CDMA-2000 zone (120, FIG. 1) into an overlay zone (130, FIG. 1), said method comprising the steps of:

(a) monitoring a paging channel of a CDMA-2000 system periodically while maintaining the MM-MB terminal in the CDMA-2000 idle state;<sup>17</sup>

(b) analyzing an overhead message received from the CDMA-2000 system and determining whether the MM-MB terminal is located in the overlay zone;<sup>18</sup>

(c) if the MM-MB terminal is determined to be located in the overlay zone, activating the WCDMA modem while maintaining the CDMA-2000 modem in an activated state;<sup>19</sup> and

(d) performing an initialization process for a WCDMA system to switch the MM-MB terminal from the CDMA-2000 idle state into a WCDMA idle state.<sup>20</sup>

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<sup>13</sup> Specification at page 18, lines 15-26.

<sup>14</sup> Specification at page 20, lines 4-10 and page 17, lines 10-15, and FIG. 7 at S710.

<sup>15</sup> Specification at page 20, lines 11-15, and FIG. 7 at S712.

<sup>16</sup> Specification at page 20, lines 16-25, and FIG. 7 at S720.

<sup>17</sup> Specification at page 22, lines 12-20, and FIG. 8 at S802.

<sup>18</sup> Specification at page 22, line 21 to page 23, line 13, and FIG. 8 at S804.

The invention of **independent claim 20** is directed to a method (FIG. 9) of switching between a CDMA-2000 modem (344, FIG. 3) and a WCDMA modem (342, FIG. 3) of an MM-MB (multimode-multiband) terminal (300, FIG. 3), when the MM-MB terminal being in a CDMA-2000 traffic state (S900, FIG. 9) moves from a CDMA-2000 zone (120, FIG. 1) into an overlay zone (130, FIG. 1), said method comprising the steps of:

- (a) monitoring a paging channel of a CDMA-2000 system periodically while maintaining the MM-MB terminal in the CDMA-2000 traffic state and the CDMA modem in an activated state to handle a CDMA-2000 call;<sup>21</sup>
- (b) analyzing an overhead message received from the CDMA-2000 system and determining whether the MM-MB terminal is located in the overlay zone;<sup>22</sup>
- (c) if the MM-MB terminal is determined to be located in the overlay zone,<sup>23</sup> determining whether the CDMA-2000 call has been terminated while maintaining the MM-MB terminal in the CDMA-2000 traffic state;<sup>24</sup>
- (d) if the CDMA-2000 call is determined to have been terminated, activating the WCDMA modem;<sup>25</sup> and
- (e) performing an initialization process for a WCDMA system to switch the MM-MB terminal into a WCDMA idle state.<sup>26</sup>

The invention of **independent claim 24** is directed to a multimode-multiband terminal (300, FIG. 3) capable of accommodating both a synchronous CDMA-2000 service and an

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<sup>19</sup> Specification at page 23, lines 14-21, and FIG. 8 at S806, S808.

<sup>20</sup> Specification at page 23, line 22 to page 24, line 3, and FIG. 8 at S810, S812.

<sup>21</sup> Specification at page 24, lines 9-14 and page 22, lines 12-20, and FIG. 9 at S902.

<sup>22</sup> Specification at page 24, lines 9-14 and page 22, line 21 to page 23, line 13, and FIG. 9 at S904.

<sup>23</sup> Specification at page 24, lines 9-14 and page 23, lines 14-21, and FIG. 9 at S906.

<sup>24</sup> Specification at page 24, lines 15-22, and FIG. 9 at S908, S910.

<sup>25</sup> Specification at page 24, line 23 to page 25, line 7, and FIG. 9 at S914.

asynchronous WCDMA service and operating in at least two frequency bands,<sup>27</sup> said terminal comprising:

an RF (radio frequency) antenna (310, FIG. 3) for transceiving a CDMA-2000 signal and/or a WCDMA signal;<sup>28</sup>

an RF transceiver (320, FIG. 3) coupled to the RF antenna for demodulating a WCDMA pilot signal received from the RF antenna and outputting the demodulated WCDMA pilot signal;<sup>29</sup>

a pilot signal measurement unit (350, FIG. 3) coupled to the RF transceiver for measuring an intensity of the demodulated WCDMA pilot signal to generate an Ec/Io value;<sup>30</sup>

a WCDMA modem (342, FIG. 3) and a CDMA-2000 modem (344, FIG. 3) coupled to the RF transceiver for processing a digital signal received from the RF transceiver and performing a call processing according to protocols defined by a WCDMA standard and a CDMA-2000 standard, respectively,<sup>31</sup>

a memory (370, FIG. 3) for storing a modem-to-modem switching program configured for switching between the WCDMA modem and the CDMA-2000 modem based the Ec/Io value;<sup>32</sup> and

a controller (360, FIG. 3) coupled to the pilot signal measurement unit, the memory and the WCDMA and CDMA-2000 modems for

- (i) receiving the Ec/Io value from the pilot signal measurement unit, and

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<sup>26</sup> Specification at page 24, line 23 to page 25, line 7, and FIG. 9 at S916, S918.

<sup>27</sup> Specification at page 13, lines 3-13, also note page 3, line 25 to page 4, line 10.

<sup>28</sup> Specification at page 13, lines 3-13, also note page 4, lines 16-24.

<sup>29</sup> Specification at page 13, lines 3-13, also note page 4, lines 16-24.

<sup>30</sup> Specification at page 13, line 22 to page 14, line 2.

<sup>31</sup> Specification at page 13, lines 3-13, also note page 4, line 25 to page 5, line 10.

<sup>32</sup> Specification at page 16, lines 13-23.

(ii) loading and executing the modem-to-modem switching program from the memory to activate the CDMA-2000 modem, while the WCDMA modem is still being activated, if a time lapse, during which the Ec/Io value remains lower than a predetermined CDMA-2000 ON threshold  $TH_{ON}$ , is greater than a preset CDMA-2000 ON condition time  $H_d$ .<sup>33</sup>

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<sup>33</sup> Specification at page 14, line 23 to page 15, line 12, also note FIG. 4 and page 15, line 24 to page 16, line 19.

**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The only ground of rejection to be reviewed on appeal is the *35 U.S.C. 103(a)* rejection of claims 1-2, 4-7, and 9-30 as being unpatentable over *Amerga* (U.S. Patent No. 7,110,765) in view of *Choi* (U.S. Patent No. 7,096,020).

## **VII. ARGUMENT**

### **Ground of Rejection to be Reviewed on Appeal**

*35 U.S.C. 103(a) rejection of claims 1-2, 4-7, and 9-30 as being unpatentable over Amerga in view of Choi*

Appellant respectfully traverses this rejection for the following reasons.

Rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396.

#### **Claim 1**

A. The applied references, especially *Amerga*, fail to teach or suggest the claimed

(c) if it is determined at step (b) that the Ec/Io value is lower than TH<sub>ON</sub>, starting to measure a time lapse, wherein the time lapse is a cumulative time during which the Ec/Io value remains lower than the CDMA-2000 ON threshold TH<sub>ON</sub>, and determining whether the time lapse exceeds a preset CDMA-2000 ON condition time H<sub>d</sub>;

The Examiner alleged <sup>34</sup> that the claim feature is taught by *Amerga* at column 8 lines 11-14, FIG. 3, FIG. 5A, column 10 lines 44-49. Appellant respectfully disagrees.

*Amerga* at column 8 lines 11-14 and FIG. 3 discloses a method of cell reselection.<sup>35</sup> No time lapse is taught or suggested in column 8 lines 11-14 and FIG. 3 of *Amerga*.

*Amerga* at FIG. 5A and column 10 lines 44-49 discloses a timer value T<sub>sr,n</sub> which is an indicator of how long a cell has met the selection criteria S.<sup>36</sup> *Amerga* explains that

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<sup>34</sup> The March 3, 2010 Final Office Action, at page 3, the last paragraph.

<sup>35</sup> See also *Amerga* at column 2 lines 64-65.

<sup>36</sup> *Amerga* at FIG. 5B, S520.

If the cell selection criteria S do not fulfill cell selection requirements for a preset number, N, of consecutive DRX cycles, the mobile station should initiate measurements on the neighbor cells (i.e. the monitored list) and attempt to reselect to another cell...<sup>37</sup>...Cell selection fails when the S criteria,  $S_{\text{qual}}$  and  $S_{\text{rxlev}}$ , are less than zero.<sup>38</sup>

A person of ordinary skill in the art would understand that the *Amerga* selection criteria S are met when they are greater than a threshold. Thus, the timer value  $T_{\text{sr},n}$ , which is an indicator of how long a cell has met the selection criteria S, is actually an indicator of how long the selection criteria S of the current cell remains higher than a threshold. This is opposite to the claimed time lapse which is a cumulative time during which the Ec/Io value remains lower than the CDMA-2000 ON threshold  $TH_{\text{ON}}$ .

Thus, notwithstanding the Examiner's allegation to the contrary,<sup>39</sup> the *Amerga* teachings cited by the Examiner do not explicitly meet the claimed feature at issue.

The *Amerga* reference also fails to implicitly teach the claim feature, because the Examiner has failed to provide "a basis in fact and/or technical reasoning to reasonably support the determination that the [claim feature] necessarily flows from the teachings of the applied prior art."<sup>40</sup>

The Examiner has further failed to provide a clear articulation<sup>41</sup> of the reason(s) why it would have been obvious to have modified the *Amerga* timer value to measure a time lapse as presently claimed.

Finally, it should be further noted that *Amerga* specifically teaches away from the claimed time lapse which is a cumulative time during which the Ec/Io value remains lower than the CDMA-2000 ON threshold  $TH_{\text{ON}}$ . In *Amerga*, if the S criteria are not met,<sup>42</sup> i.e., are lower

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<sup>37</sup> *Amerga* at column 8 lines 33-66.

<sup>38</sup> *Amerga* at column 9 lines 11-12.

<sup>39</sup> The March 3, 2010 Final Office Action, at page 24, paragraph b.

<sup>40</sup> *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis added).

<sup>41</sup> Rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396.

<sup>42</sup> *Amerga* at FIG. 5B, arrow Narrator: from 520 to 522.

than a threshold), the timer value  $T_{sr,n}$  will be immediately erased, i.e., no time lapse is measured if the S criteria are lower than the threshold.

It should be now clear that *Amerga* fails to teach the claim feature at issue, both explicitly and implicitly. The reference also fails to render obvious the claim feature at issue, especially because *Amerga* teaches away from the claim feature. The reference therefore fails to teach or suggest the claimed time lapse. The deficiency of *Amerga* is not curable by the teaching reference of *Choi* which is relied on for other claim limitations.

Accordingly, Appellant respectfully submits that even if *Amerga* and *Choi* were combinable (which Appellant contends to the contrary), the combination would still fail to teach or suggest the claimed time lapse.

B. The applied references, especially *Choi*, fail to teach or suggest the claimed

(d) if it is determined at step (c) that the time lapse exceeds  $H_d$ ,  
activating the CDMA-2000 modem, wherein the CDMA-2000 modem is activated before the MM-MB terminal leaves the overlay zone and while the WCDMA modem is still being activated to keep the MM-MB terminal in the WCDMA idle state;

The Examiner admitted that *Amerga* does not teach or suggest the claim feature at issue. The Examiner then alleged that *Choi* teaches the missing feature at column 6 line 58 - column 7 line 17. Appellant respectfully disagrees.

The cited portion of *Choi* appears to disclose a handoff process, wherein the mobile terminal (MB) is switched from a WCDMA system to a CDMA system. However, the *Choi* handoff process requires

- a WCDMA call to be made,<sup>43</sup>
- then a CDMA call to be established alongside the WCDMA call,<sup>44</sup> and
- finally, a release of the WCDMA call<sup>45</sup> to retain only the CDMA call.<sup>46</sup>

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<sup>43</sup> *Choi* at column 6 line 61, column 7 line 13.

<sup>44</sup> *Choi* at column 7 lines 2 and 12.

<sup>45</sup> *Choi* at column 7 lines 13-15.

<sup>46</sup> *Choi* at the paragraph bridging columns 2-3.

Thus, in the *Choi* handoff process, a WCDMA call must be made and, hence, the WCDMA idle state of the terminal cannot be kept, contrary to the claim requirement highlighted above.

Accordingly, even if the handoff process of *Choi* could be properly combined with *Amerga* (which Appellant contends to the contrary), the combination would still require a WCDMA call to be made for handoff purposes (as required by *Choi*), failing to teach or disclose the claim feature at issue, i.e., “to keep the MM-MB terminal in the WCDMA idle state.”

The Examiner’s response<sup>47</sup> to the above argument is noted. It is acknowledged that *Amerga* in column 4 lines 45-48 cited by the Examiner discloses a cell reselection process during the idle mode. The teaching reference of *Choi*, on the other hand, discloses a handoff process during which a WCDMA call must be made, i.e., the WCDMA idle mode cannot be maintained.

A person of ordinary skill in the art would have modified, at best and if at all, *Amerga* to include the handoff process of *Choi* to handle handoff during the traffic mode (because a call must be made per *Choi* for proper handoff).

The person of ordinary skill in the art would not have modified *Amerga* to include the handoff process of *Choi* for handling the cell reselection in the idle mode, because *Choi* does not teach or suggest that his handoff process is at all usable for the idle mode (because a call must be made).

Finally, assuming *arguendo* that it would have been obvious to have modified *Amerga* to include the handoff process of *Choi* for handling the cell reselection in the idle mode, the combination would still require a call to be made (per *Choi*) thereby failing to meet the claim requirement that the idle mode be kept.

Accordingly, Appellant respectfully submits that *Amerga* and *Choi* singly or in combination do not teach or suggest the claim feature at issue.

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<sup>47</sup> The March 3, 2010 Final Office Action, at page 24, the paragraph c.

For any of the reasons A-B detailed above, Appellant respectfully submits that independent claim 1, as well as the respective dependent claims, are separately patentable over the applied art of record.

Claim 4

The applied references, especially *Amerga*, fail to teach or suggest that “the initialization at step (e) is performed through a system determination substate, a pilot channel acquisition substate and a synchronous channel acquisition substate.”

The Examiner alleged that the claim features are taught by *Amerga* at FIG. 5A, boxes 504, 502 and 552, respectively. Appellant respectfully disagrees, because the cited portions of *Amerga* do not at all teach or suggest any substates as presently claimed. Further except for box 552 (cell reselection) which more or less resembles, if at all, an initialization, boxes 502 and 504 of *Amerga* disclose processes that are performed well before any initialization, and cannot be part of the claimed initialization.

Accordingly, Appellant respectfully submits that claim 4 is separately patentable over the applied art of record.

Claim 6

The rejection of claim 6 is respectfully traversed for at least reason A detailed with respect to claim 1. The rejection of claim 6 is further traversed for the following reasons.

C. The applied references singly or in combination fail teach or suggest the claimed

- (d) before the MM-MB terminal leaves the overlay zone and while the WCDMA modem is still actively handling the WCDMA call, if it is determined at step (c) that the time lapse exceeds  $H_d$ , activating the CDMA-2000 modem, and then determining whether the WCDMA call has been terminated; and
  - (e) if the WCDMA call is determined at step (d) to have been terminated, performing an initialization for a CDMA-2000 system to switch the MM-MB terminal into a CDMA-2000 idle state.

In other words, the claim language requires (i) a determination whether the WCDMA call has been terminated and (ii) an initialization to switch the MM-MB terminal into a CDMA-2000 idle state after the WCDMA call has been terminated.

The Examiner alleged<sup>48</sup> that the claim features are taught by *Amerga*. Appellant respectfully disagrees, because the cited portion so *Amerga*, i.e., boxes 550, 552 in FIG. 5A, column 9 lines 12-57, mention nothing about any determination of a call termination. All that is disclosed in the cited portions is about cell selection which is irrelevant to the claim feature at issue, i.e., call termination.

The Examiner's additional citation<sup>49</sup> of *Amerga*'s column 4 lines 48-52 is noted. The cited portion indicates that the cell selection of *Amerga* can be applied to a mode other than the idle mode. Assuming *arguendo* that the *Amerga*'s cell selection can be applied to a traffic mode where a call is being in progress, it is still unclear from the Examiner's rationale how *Amerga* teaches the claimed (i) determination whether the WCDMA call has been terminated and (ii) initialization to switch the MM-MB terminal into a CDMA-2000 idle state after the WCDMA call has been terminated.

The *Amerga* reference clearly fails to explicitly teach the claim features at issue.

The Examiner has also failed to provide "a basis in fact and/or technical reasoning to reasonably support the determination that the [claim feature] necessarily flows from the teachings of the applied prior art."<sup>50</sup> At the very least, it is unclear from the Final Office Action as to why *Amerga* necessarily checks whether the call has been terminated or not, while performing a call reselection during a traffic mode ?

Finally, the Examiner has further failed to provide a clear articulation<sup>51</sup> of the reason(s) why it would have been obvious to have modified the *Amerga* traffic mode's cell selection to make (i) a determination whether the WCDMA call has been terminated.

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<sup>48</sup> The March 3, 2010 Final Office Action, at page 7, paragraph (d).

<sup>49</sup> The March 3, 2010 Final Office Action, at page 25, line 4.

<sup>50</sup> *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis added).

<sup>51</sup> Rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some

The Examiner has also failed to provide a clear articulation of the reason(s) why in *Amerga* it would have been obvious to wait until the call has been terminated to make the initialization, designated at (ii) above.

It should be now clear that *Amerga* fails to teach the claim feature at issue, both explicitly and implicitly. The reference also fails to render obvious the claim feature at issue. The deficiency of *Amerga* is not curable by the teaching reference of *Choi* which is relied on for other claim limitations.

Accordingly, Appellant respectfully submits that even if *Amerga* and *Choi* were combinable (which Appellant contends to the contrary), the combination would still fail to teach or suggest the claimed features (i) and (ii) as detailed above.

For any of the reasons A and C detailed above, Appellant respectfully submits that independent claim 6, as well as the respective dependent claims, are patentable over the applied art of record.

#### Claim 9

D. The applied references, especially *Amerga*, do not teach or suggest the claimed steps (d1)-(d3) which are performed after a determination that the WCDMA call has not been terminated (as opposed to step (e) of base claim 6 which is performed upon an opposite determination that the WCDMA call has been terminated).

It should be noted that claim 9, when read together with claim 6, defines two branches of actions: one to be performed when the WCDM call has been terminated (step (e) of claim 6), the other to be performed when the WCDM call has not been terminated (claim 9). Since *Amerga* does not make a determination as to whether the WCDMA call has been terminated or not (see the discussion C with respect to claim 6 immediately above), the reference singly or in combination with *Choi* does not teach or suggest the two branches of action recited in claim 9

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articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396.

and the condition (i.e., call termination) upon which one of the branches of action is to be performed.

E. The applied references, especially *Amerga*, do not teach or suggest the claimed thresholds, i.e., TH<sub>OFF</sub> which is lower than TH<sub>ON</sub>.

According to the Examiner's own rationale regarding claim 6 (from which claim 9) depends, the claimed TH<sub>ON</sub> is met by Q<sub>qual min</sub>.<sup>52</sup> The Examiner with respect to claim 9, without any reasoning or explanation, held that the claimed TH<sub>ON</sub> is met by another threshold of *Amerga*, i.e., S<sub>intrasearch Floor</sub>.<sup>53</sup>

With respect to TH<sub>OFF</sub>, the Examiner cited<sup>54</sup> column 10 lines 44-49 of *Amerga* which does not at all mention any threshold as well as any relationship (greater/lower) to the other threshold (Q<sub>qual min</sub> or S<sub>intrasearch Floor</sub>).

The Examiner's failure to specifically identify the claim features in the applied reference does not amount to a *clear* articulation of the reason(s) why the claimed invention would have been obvious.<sup>55</sup>

The rejection is therefore improper.

F. The applied references, especially *Amerga*, do not teach or suggest the claimed another time lapse [which] is a cumulative time during which the Ec/Io value remains higher than TH<sub>OFF</sub>.

It should be noted that claim 9 when read together with claim 6 from which claim 9 depends requires a time lapse [which] is a cumulative time during which the Ec/Io value remains lower than TH<sub>ON</sub>. In other words, the claim language requires two different time lapses.

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<sup>52</sup> The March 3, 2010 Final Office Action, at page 6, lines 4-5 from bottom.

<sup>53</sup> The March 3, 2010 Final Office Action, at page 10, line 8.

<sup>54</sup> The March 3, 2010 Final Office Action, at page 10, line 7.

<sup>55</sup> Rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396.

The Examiner cited exactly the same citation of *Amerga* (i.e., column 10 lines 44-49) to read on both claimed time lapses.<sup>56</sup> The Examiner's failure to specifically identify the claim features in the applied reference does not amount to a clear articulation of the reason(s) why the claimed invention would have been obvious.<sup>57</sup>

It should be further noted that column 10 lines 44-49, contrary to the Examiner's allegation,<sup>58</sup> does not disclose multiple timers.

The rejection is therefore improper.

G. The applied references, especially *Amerga*, do not teach or suggest the claimed "(d3) if it is determined at step (d2) that said another time lapse exceeds Hc, deactivating the CDMA-2000 modem that has been activated at step (d) and returning to step (a)."

The Examiner's cited portion of *Amerga*, i.e., column 9 lines 9-21,<sup>59</sup> is about cell reselection which is neither indicative nor suggestive of the claimed modem deactivation.

Appellant further notes that almost the exact same citation of *Amerga*, i.e., column 9 lines 12-17, has been interpreted by the Examiner as teaching activation of the same CDMA-2000 modem.<sup>60</sup>

The Examiner's failure to specifically identify the claim features in the applied reference does not amount to a clear articulation of the reason(s) why the claimed invention would have been obvious.<sup>61</sup>

The rejection is therefore improper.

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<sup>56</sup> The March 3, 2010 Final Office Action, at page 7, line 3 (i.e., "time lapse") and page 10, lines 10-12 (i.e., "another time lapse").

<sup>57</sup> Rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396.

<sup>58</sup> The March 3, 2010 Final Office Action, at page 10, line 12.

<sup>59</sup> The March 3, 2010 Final Office Action, at page 10, the last three lines.

<sup>60</sup> The March 3, 2010 Final Office Action, at page 7, line 10.

<sup>61</sup> Rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396.

For any of the reasons D-G detailed above, Appellant respectfully submits that claim 9, as well as the respective dependent claims, are separately patentable over the applied art of record.

#### Claim 10

As to claim 10, the applied references, especially *Amerga*, do not teach or suggest “if it is determined at step (d1) that the Ec/Io value is not higher than TH<sub>OFF</sub>, the MM-MB terminal returns to step (d) to determine **once more** whether the WCDMA call has been terminated.”

In other words, claim 10 when read together with claims 6 and 9 requires **two** determinations whether the call has been terminated or not. The Examiner has failed to provide a **clear** articulation of the reason(s) why *Amerga* discloses such two determinations.<sup>62</sup>

The rejection is therefore improper.

Appellant respectfully submits that claim 10 is separately patentable over the references as applied by the Examiner.

#### Claim 11

As to claim 11, the applied references, especially *Amerga*, do not teach or suggest that “the CDMA-2000 modem is **deactivated** at step (d3) **regardless** of whether the Ec/Io value is higher than TH<sub>ON</sub> or not.”

The Examiner again cited<sup>63</sup> the same teaching of *Amerga*, i.e., column 9 lines 9-21, which has been interpreted in the rejection of claim 6 as teaching **conditional activation** of the same CDMA-2000 modem, or in the rejection of claim 9 as teaching **conditional** deactivation of the same CDMA-2000 modem.

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<sup>62</sup> The March 3, 2010 Final Office Action, at page 11, paragraph 17.

<sup>63</sup> The March 3, 2010 Final Office Action, at page 11, paragraph 18.

The Examiner's failure to specifically identify the claim features in the applied reference does not amount to a *clear* articulation of the reason(s) why the claimed invention would have been obvious.<sup>64</sup>

The rejection is therefore improper.

Appellant respectfully submits that claim 11 is separately patentable over the references as applied by the Examiner.

### Claim 12

As to claim 12, the applied references, especially *Amerga*, do not teach or suggest "if it is determined at step (d2) that the another time lapse does not exceed the CDMA-2000 OFF condition time  $H_c$ , the MM-MB terminal returns to step (d) to determine *once more* whether the WCDMA call has been terminated."

In other words, claim 12 when read together with claims 6, 9 and 10 requires *three* determinations whether the call has been terminated or not. The Examiner has failed to provide a *clear* articulation of the reason(s) why *Amerga* discloses such three determinations.<sup>65</sup>

The rejection is therefore improper.

Appellant respectfully submits that claim 12 is separately patentable over the references as applied by the Examiner.

### Claim 16

Claim 16 requires, among other things, an idle-to-idle transition.

The Examiner's combination of *Amerga* and *Choi* necessarily include a call being made as taught by *Choi*.<sup>66</sup>

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<sup>64</sup> Rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396.

<sup>65</sup> The March 3, 2010 Final Office Action, at page 11, paragraph 19.

<sup>66</sup> Note the discussion at B *supra* with respect to claim 1.

The rejection is therefore improper.

Appellant respectfully submits that claim 16, as well as the respective dependent claims, are separately patentable over the references as applied by the Examiner.

Claim 20

Claim 20 requires, among other things, (i) a determination whether the CDMA-2000 call has been terminated while maintaining the MM-MB terminal in the CDMA-2000 traffic state, and (ii) an activation of the WCDMA modem if the CDMA-2000 call is determined to have been terminated.

The Examiner's combination of *Amerga* and *Choi* fail to meet the claim features at issue.<sup>67</sup>

The rejection is therefore improper.

Appellant respectfully submits that claim 20, as well as the respective dependent claims, are separately patentable over the references as applied by the Examiner.

Claim 24

The rejection of claim 24, as well as the respective dependent claims, is respectfully traversed for at least reason A detailed with respect to claim 1.

Claim 27

The rejection of claim 27 is respectfully traversed for at least reasons E-G detailed with respect to claim 9.

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<sup>67</sup> Note the discussion at C *supra* with respect to claim 6.

Each of the Examiner's rejections has been traversed. Accordingly, Appellant respectfully submits that all claims on appeal are considered allowable. Accordingly, reversal of the Examiner's Final Rejection is believed appropriate and courteously solicited.

If for any reason this Appeal Brief is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned, Appellant's attorney of record.

To the extent necessary, a petition for an extension of time under *37 C.F.R. 1.136* is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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## **VIII. CLAIMS APPENDIX**

1. A method of switching between a WCDMA modem and a CDMA-2000 modem of an MM-MB (multimode-multiband) terminal, when the MM-MB terminal being in a WCDMA idle state moves from an overlay zone into a CDMA-2000 zone, said method comprising the steps of:

- (a) receiving a WCDMA signal transmitted from a WCDMA system, and measuring an Ec/Io (energy of carrier/interference of others) value by using the WCDMA signal;
- (b) determining whether the Ec/Io value is lower than a predetermined CDMA-2000 ON threshold  $TH_{ON}$ ;
- (c) if it is determined at step (b) that the Ec/Io value is lower than  $TH_{ON}$ , starting to measure a time lapse, wherein the time lapse is a cumulative time during which the Ec/Io value remains lower than the CDMA-2000 ON threshold  $TH_{ON}$ , and determining whether the time lapse exceeds a preset CDMA-2000 ON condition time  $H_d$ ;
- (d) if it is determined at step (c) that the time lapse exceeds  $H_d$ , activating the CDMA-2000 modem, wherein the CDMA-2000 modem is activated before the MM-MB terminal leaves the overlay zone and while the WCDMA modem is still being activated to keep the MM-MB terminal in the WCDMA idle state; and
- (e) performing an initialization for a CDMA-2000 system to switch the MM-MB terminal from the WCDMA idle state into a CDMA-2000 idle state.

2. The method of claim 1, wherein

the MM-MB terminal inspects a CPICH (common pilot channel) periodically to receive the WCDMA signal at step (a).

4. The method of claim 1, wherein the initialization at step (e) is performed through a system determination substate, a pilot channel acquisition substate and a synchronous channel acquisition substate.

5. The method of claim 1, wherein, after being switched into the CDMA-2000 idle state at step (e), the MM-MB terminal deactivates the WCDMA modem.

6. A method of switching between a WCDMA modem and a CDMA-2000 modem of an MM-MB terminal, when the MM-MB terminal moves from an overlay zone into a CDMA-2000 zone while handling a WCDMA call, said method comprising the steps of:

(a) while the MM-MB terminal is handling the WCDMA call by the active WCDMA modem , receiving a WCDMA signal transmitted from a WCDMA system, and measuring an Ec/Io (energy of carrier/interference of others) value by using the WCDMA signal;

(b) determining whether the Ec/Io value is lower than a predetermined CDMA-2000 ON threshold  $TH_{ON}$ ;

(c) if it is determined at step (b) that the Ec/Io value is lower than  $TH_{ON}$ , starting to measure a time lapse, wherein the time lapse is a cumulative time during which the Ec/Io value remains lower than the CDMA-2000 ON threshold  $TH_{ON}$ , and determining whether the time lapse exceeds a preset CDMA-2000 ON condition time  $H_d$ ;

(d) before the MM-MB terminal leaves the overlay zone and while the WCDMA modem is still actively handling the WCDMA call, if it is determined at step (c) that the time lapse exceeds  $H_d$ , activating the CDMA-2000 modem, and then determining whether the WCDMA call has been terminated; and

(e) if the WCDMA call is determined at step (d) to have been terminated, performing an initialization for a CDMA-2000 system to switch the MM-MB terminal into a CDMA-2000 idle state.

7. The method of claim 6, wherein

the MM-MB terminal inspects a CPICH (common pilot channel) periodically to receive the WCDMA signal at step (a); and

the CDMA-2000 modem is activated in step (d) while the WCDMA call is still being handled by the WCDMA modem.

9. The method of claim 6, wherein, if the WCDMA call is determined at step (d) to have not been terminated , the method further includes the steps of:

(d1) determining whether the Ec/Io value is higher than a predetermined CDMA-2000 OFF threshold  $TH_{OFF}$  which is lower than  $TH_{ON}$ ;

(d2) if it is determined at step (d1) that the Ec/Io value is higher than  $TH_{OFF}$ , starting to measure another time lapse, wherein said another time lapse is a cumulative time during which the Ec/Io value remains higher than  $TH_{OFF}$ , and determining whether said another time lapse exceeds a preset CDMA-2000 OFF condition time  $H_c$ ; and

(d3) if it is determined at step (d2) that said another time lapse exceeds  $H_c$ , deactivating the CDMA-2000 modem that has been activated at step (d) and returning to step (a).

10. The method of claim 9, wherein, if it is determined at step (d1) that the Ec/Io value is not higher than  $TH_{OFF}$  , the MM-MB terminal returns to step (d) to determine once more whether the WCDMA call has been terminated.

11. The method of claim 9, wherein the CDMA-2000 modem is deactivated at step (d3) regardless of whether the Ec/Io value is higher than  $TH_{ON}$  or not.

12. The method of claim 10, wherein, if it is determined at step (d2) that the another time lapse does not exceed the CDMA-2000 OFF condition time  $H_c$ , the MM-MB terminal returns to step (d) to determine once more whether the WCDMA call has been terminated.

13. The method of claim 6, wherein step (e) further includes the sub-steps of:

- (e1) inspecting another service channel FA (frequency assignment) of the WCDMA system;
- (e2) determining whether another WCDMA signal is found; and
- (e3) if said another WCDMA signal is found, switching the MM-MB terminal into a WCDMA idle state.

14. The method of claim 13, wherein, if it is determined at sub-step (e2) that no other WCDMA signal is found, the MM-MB terminal performs said initialization into the CDMA-2000 system to be switched into said CDMA-2000 idle state.

15. The method of claim 14, wherein, after being switched into the CDMA-2000 idle state, the MM-MB terminal deactivates the WCDMA modem.

16. A method of switching between a CDMA-2000 modem and a WCDMA modem of an MM-MB (multimode-multiband) terminal, when the MM-MB terminal being in a CDMA-2000 idle state moves from a CDMA-2000 zone into an overlay zone, said method comprising the steps of:

- (a) monitoring a paging channel of a CDMA-2000 system periodically while maintaining the MM-MB terminal in the CDMA-2000 idle state;
- (b) analyzing an overhead message received from the CDMA-2000 system and determining whether the MM-MB terminal is located in the overlay zone;

- (c) if the MM-MB terminal is determined to be located in the overlay zone, activating the WCDMA modem while maintaining the CDMA-2000 modem in an activated state; and
- (d) performing an initialization process for a WCDMA system to switch the MM-MB terminal from the CDMA-2000 idle state into a WCDMA idle state.

17. The method of claim 16, wherein the MM-MB terminal determines whether the MM-MB terminal is located in the overlay zone by investigating a base ID of a system parameter message included in the overhead message analyzed at step (b).

18. The method of claim 16, wherein, if the MM-MB terminal is not determined to be located in the overlay zone at step (b), the MM-MB terminal returns to step (a) to monitor the paging channel again.

19. The method of claim 16, wherein, after being switched into the WCDMA idle state, the MM-MB terminal deactivates the CDMA-2000 modem.

20. A method of switching between a CDMA-2000 modem and a WCDMA modem of an MM-MB (multimode-multiband) terminal, when the MM-MB terminal being in a CDMA-2000 traffic state moves from a CDMA-2000 zone into an overlay zone, said method comprising the steps of:

- (a) monitoring a paging channel of a CDMA-2000 system periodically while maintaining the MM-MB terminal in the CDMA-2000 traffic state and the CDMA modem in an activated state to handle a CDMA-2000 call;
- (b) analyzing an overhead message received from the CDMA-2000 system and determining whether the MM-MB terminal is located in the overlay zone;

(c) if the MM-MB terminal is determined to be located in the overlay zone, determining whether the CDMA-2000 call has been terminated while maintaining the MM-MB terminal in the CDMA-2000 traffic state;

(d) if the CDMA-2000 call is determined to have been terminated, activating the WCDMA modem; and

(e) performing an initialization process for a WCDMA system to switch the MM-MB terminal into a WCDMA idle state.

21. The method of claim 20, wherein the MM-MB terminal determines whether the MM-MB terminal is located in the overlay zone by investigating a base ID of a system parameter message included in the overhead message analyzed at step (b).

22. The method of claim 20, wherein, if the MM-MB terminal is not determined to be located in the overlay zone at step (b), the MM-MB terminal returns to step (a) to monitor the paging channel again.

23. The method of claim 20, wherein, after being switched into the WCDMA idle state, the MM-MB terminal deactivates the CDMA-2000 modem.

24. A multimode-multiband terminal capable of accommodating both a synchronous CDMA-2000 service and an asynchronous WCDMA service and operating in at least two frequency bands, said terminal comprising:

an RF (radio frequency) antenna for transceiving a CDMA-2000 signal and/or a WCDMA signal;

an RF transceiver coupled to the RF antenna for demodulating a WCDMA pilot signal received from the RF antenna and outputting the demodulated WCDMA pilot signal;

a pilot signal measurement unit coupled to the RF transceiver for measuring an intensity of the demodulated WCDMA pilot signal to generate an Ec/Io value;

a WCDMA modem and a CDMA-2000 modem coupled to the RF transceiver for processing a digital signal received from the RF transceiver and performing a call processing according to protocols defined by a WCDMA standard and a CDMA-2000 standard, respectively;

a memory for storing a modem-to-modem switching program configured for switching between the WCDMA modem and the CDMA-2000 modem based the Ec/Io value; and

a controller coupled to the pilot signal measurement unit, the memory and the WCDMA and CDMA-2000 modems for

- (i) receiving the Ec/Io value from the pilot signal measurement unit, and
- (ii) loading and executing the modem-to-modem switching program from the memory to activate the CDMA-2000 modem, while the WCDMA modem is still being activated, if a time lapse, during which the Ec/Io value remains lower than a predetermined CDMA-2000 ON threshold  $TH_{ON}$ , is greater than a preset CDMA-2000 ON condition time  $H_d$ .

25. The multimode-multiband terminal of claim 24, wherein the controller loads the modem-to-modem switching program at the moment the Ec/Io value starts to be lower than the CDMA-2000 ON threshold  $TH_{ON}$  or when it is determined that the multimode-multiband terminal enters an overlay zone by analyzing system information.

26. The multimode-multiband terminal of claim 24, wherein, only after the CDMA-2000 modem has been activated and an initialization into a CDMA-2000 system has been completed so that the multimode-multiband terminal has been completely switched into a CDMA-2000 idle state, does the controller deactivate the WCDMA modem.

27. The multimode-multiband terminal of claim 24, wherein, even if the CDMA-2000 modem has been activated, based on the Ec/Io value being lower than  $TH_{ON}$  during the time lapse greater than  $H_d$ , the controller still deactivates the CDMA-2000 modem if another time lapse, during which the Ec/Io value is maintained higher than a predetermined CDMA-2000 OFF threshold  $TH_{OFF}$ , is greater than a preset CDMA-2000 OFF condition time  $H_c$ ,  
wherein  $TH_{ON}$  is greater than  $TH_{OFF}$ .

28. The multimode-multiband terminal of claim 24, wherein, only after the WCDMA modem has been activated and an initialization into a WCDMA system has been completed so that the multimode-multiband terminal has been completely switched into a WCDMA idle state, does the controller deactivate the CDMA-2000 modem.

29. The multimode-multiband terminal of claim 27, wherein information upon the CDMA-2000 ON threshold  $TH_{ON}$ , the CDMA-2000 ON condition time  $H_d$ , the CDMA-2000 OFF threshold  $TH_{OFF}$  and the CDMA-2000 OFF condition time  $H_c$  are stored in the memory.

30. The multimode-multiband terminal of claim 24, further comprising a timer for measuring the time lapse and reporting the time lapse to the controller.

**IX. EVIDENCE APPENDIX**

None

**X. RELATED PROCEEDINGS APPENDIX**

None